

was vexatious, or, in the language of the Roman Law, calumnious; and the costs were not given against him as part of the judgment, but could be recovered only by a new action called an action of calumny, corresponding to an action for a malicious suit at common law.

"In the time of Justinian, and perhaps at an earlier period, the action of calumny had fallen into desuetude, and he, as a substitute, required the oath of calumny."

"The oath was required of both the plaintiff and defendant, and was, in substance, the same as that required of the plaintiff by this Court."

"The learned writer above quoted, says further: 'But these affidavits were not evidence in the case; they were required solely and professedly as a check to vexatious litigation; but the oath of calumny, though not evidence, was an essential part of the proceedings in the cause. It was ordered by Justinian to be officially required by the judge, and if omitted, it vitiated the whole proceedings. The practice of requiring the oath of calumny appears to be preserved generally in the civil law courts of the continent of Europe. It is not, however, observed in France, and Dupin condemns it as inducing more to perjury than the prevention of litigation, which, he says, is more effectively checked by a liability for costs.'"

"The article from which these extracts are made, will be found, at length, in *Cookin's U. S. Admiralty*, p. 624, Note (c)."

Whether or not in this country, where the plaintiff is always liable for the costs if he fails to sustain his action, it is necessary, for the more certain prevention of vexatious litigation, to require him to verify his petition by oath, is a question on which there is likely to be a diversity of opinion; but, however I might be inclined to answer that question in its proper time and place, I feel constrained to say that if we relax the construction which is contended for by the counsel for the defendant, we will render the statutory requirement wholly nugatory, and it might as well be repealed. If it is a sufficient verification for an attorney, or any other person than the plaintiff in an action, to swear that the facts set forth in the plaintiff's petition 'are true, as he verily believes,' without setting forth the reasons or foundation of his belief, then we have in fact, despite the statute, no other guard against the operations of the dishonest persons and speculating attorneys, spoken of by one of the learned counsel, than the plaintiff's liability for costs; and such parties may embark in mercenary or malicious suits to their hearts' content, if they are ready to risk in the adventure sufficient money to pay the costs. Such doctrine is certainly at variance with the design of the Legislature, for it appears to me clear, that that body, in enacting the law now under discussion, in the year 1848, intended to erect an additional barrier against vexatious litigation; for at that time, as now, the plaintiff incurred the liability of having to pay costs.

Notion refused.

Chief Justice LEE said: I concur in the opinion read by my brother Robinson, for I conceive that any construction of the statute more lax than that given, would render the law a mere nullity.

SUPREME COURT.—March special term.
Chief Justice LEE and associate Justices ROBERTSON and LEE.

The King, vs. Kaula, & Polygam. Found guilty and sentenced to 2 years imprisonment at hard labor and to pay a fine of \$2.

A. B. Bates for the Prosecution.

J. W. E. Maikai for the Prisoner.

The King vs. Kamehameha, & Forgery. The prisoner was charged with having forged an order, on Mr. McFarlane the proprietor of the Commercial Hotel, for two bottles of Brandy, and having signed thereto the name of one of the chiefs.

The Counsel for the prisoner quoted the 1st section of the 31st chap. of the Penal Code, which defines Forgery to be 'fraudulent making or altering a writing, with the intent to defraud another and prejudice him in some right; and that every admitting that the prisoner had made the order in question, it was not forged, in as much as the sale of spirituous liquors to natives of this kingdom, is prohibited by law and therefore neither the party whose name was affixed to the order, nor the proprietor of the Commercial Hotel upon whom it was drawn, could be thereby prejudiced in any legal right.

The Counsel for the prosecution argued, that if the intent to defraud another was proved that was sufficient, no matter whether any one was actually deceived thereby or not.

The Court remarked that this was the first time the question had been raised and that they would reserve the points made by the prisoner's Counsel, and charged the Jury that notwithstanding an action could not be maintained upon the order for the price of the brandy, yet that if the prisoner had forged it with the intent to defraud or prejudice any person in any right, he was guilty of Forgery.—The evidence on the part of the prosecution to connect the prisoner with the making of the document, was weak and the Jury found him not guilty.

A. B. Bates Counsel for the Pros.

Messrs. Harris and Maikai for the Pris.

The King vs. Kaula, & Forgery. The prisoner was found guilty and sentenced to 18 months imprisonment at hard labor.

A. B. Bates Counsel for Pros.

Messrs. Harris and Kaunaka Counsel for the Pros.

The King vs. Keonohokou, & Polygam. Prisoner was arraigned and pleaded guilty, and was sentenced to imprisonment at hard labor for one year and a fine of \$2.

The King vs. Yonigong (a Chinaman), & Burglary. The prisoner was arraigned and pleaded guilty, and was sentenced to 18 months imprisonment at hard labor.

The King vs. Maui, Peau and Bakonia, & Larceny in 3d degree. The prisoners had been committed for trial by the Police Justice of Honolulu on a charge of having stolen a Bullock of the value of \$20 from the Rev. Mr. Emerson in the district of Waialua. The Counsel for the prisoners moved that the prosecution be dismissed on the ground that the Supreme Court had no original jurisdiction in this case, the property alleged to have been stolen, being less than \$100 in value, and that the Police Justice ought to have tried the case and given judgment.

It appears that the Police Justice was under the impression that the prisoners, being residents of Waialua, his jurisdiction over them was committed to that district, his jurisdiction over the case extended only to an examination of the witnesses and commitment for trial.

The Court considered the objection of the Prisoner's Counsel as well taken, and remanded the case to the Police Court for trial.

A. B. Bates Counsel for the Pros.

Messrs. W. Humphries and Kaunaka for the Prisoners.

C. P. Ward vs. Joseph Booth, & Slander. The Jury in this case found a verdict for the plaintiff. Damages \$750.

J. D. Blair Esqr. for plaintiff.

A. B. Bates Esqr. for defendant.

M. W. Mathews vs. Hawaiian Steam Navigation Company.—The plaintiff in this action was employed by the Agent of the defendants in San Francisco as Chief Engineer of the Steamer 'West Point,' on the 29th day of Sept. 1854 for service at the rate of \$2000 per annum, in monthly payments. He served the company in the above capacity to the 7th January 1855, when he was dismissed from their service, as he alleges, without just cause; for which he brought this action.

The Jury found a verdict for the plaintiff for \$250 being the amount of his salary as engineer from the date of his dismissal up to the day of trial.

J. D. Blair Esqr. for plaintiff.

A. B. Bates Esqr. for defendant.

Keonani vs. Fred Ogden.—The plaintiff in this action sought to recover damages from the defendant for criminal conversation with the plaintiff's wife, Abigail Mahela. The Jury being unable to agree, after an absence of four hours were discharged by the Court.

J. W. Marsh and C. C. Harris Esqs. for the plaintiff.

J. D. Blair Esqr. for defendant.

A few other cases were disposed of, not of importance, and Court adjourned on Monday the 19th inst.

THE POLYNESIAN.

SATURDAY, MARCH 24, 1855.

Court News.

At a court held by the King on Wednesday the 21st at 11 A. M., it pleased His Majesty to receive the Commissioner of the United States, who presented the officers of the U. S. Ship DECATUR, whose names follow:—

Isaac T. Sterett, Commander. Edward Middleton, A. J. Drake, A. K. Hughes, Thos. S. Phelps, Lieutenants. J. T. Taylor, Ass't. Surgeon. G. W. Morris, Passed Midshipman. Marshall C. Campbell, Midshipman.

The Commissioner also presented Alfred Moses, Esqr., of San Francisco.

At the same court at half past 11, A. M. it pleased His Majesty to receive her Britannic Majesty's Consul General who presented the officers undernamed, of H. B. M.'s Ship Dido.

Capt. Morshend. John H. Armer, A. Ryder, Lieutenants. Henry S. Dyer, Paymaster. J. B. Hammond, Master. Dr. Bernard, Surgeon. C. Pringle, Midshipman. E. Boileau, Mate. A. Boys, Passed Clerk. D. Ackeron, Midshipman.

Loyalty to His Majesty.

It would be hard to find, either in existing governments, or in the history of those which have existed hitherto, a solitary instance where the supreme executive, whether Emperor, King or President, has come to the throne or assumed the supreme power by election, with a popularity equal to His Majesty, Kamehameha IV. Indeed, we have yet to hear the first note of dissent, or the first murmur of dissatisfaction, from any of His Majesty's subjects.

Officially and legally named as His successor by His late Majesty, that nomination was confirmed with the full sanction of the chiefs in the House of Nobles and publicly announced long before His late Majesty's death. When that event occurred, His Majesty Kamehameha IV was publicly proclaimed, and the popular voice confirmed the action of the House of Nobles. And not merely have the native-born subjects of His Majesty expressed their satisfaction and loyalty to him, since his accession to the throne, but a large number of foreign-born residents and subjects have spontaneously presented to the King their congratulations and sentiments of loyalty and affection from various parts of the group. We have already published a letter or two of this character, and we are happy to add below another of the same nature, all which go to show that his present Majesty is seated upon the throne of his ancestors as well by the choice of His subjects, as by descent from the only line of Kings that has ever reigned over this nation.

No attempt, we presume, will be made to controvert this fact at the islands, where its truth is patent to everyone; but for the information of the friends of the Hawaiian nation abroad we can assure them that no King ever ascended a throne with a more universal approval of His subjects, than His Majesty, Kamehameha IV.

We give the following as a specimen of others, and expressing the sentiments, were persued, of the foreign residents generally throughout the group.

To the King's Majesty:—We, Your Majesty's loyal and dutiful subjects of the district of Hawaii, would respectfully offer our hearty congratulations to Your Majesty, on Your accession to the throne of these islands.

With assurances of our sincere sympathy, for the loss which Your Majesty and this kingdom is now grieving, in the death of our late Sovereign, we would humbly beg to offer to Your own Majesty's person, a continuation of that loyalty, and good faith, which we have ever felt, and expressed towards the Crown of these realms.

That Your Majesty may, during a long, prosperous, and happy reign continue to dwell in the hearts and affections of your people, is the sincere prayer of your attached subjects of Waimea.

Geo. Kenway, Wm. F. Conway, Geo. Hardy, Isaac Y. Davis, Anthony D. Allen, Rob. Charlton, Edmund Bright, Thos. I. Cummins, John Thomas, Thomas Sweet, John Davis, James Louzada, Isaac Louzina, Edw. Sparks, Geo. W. Coffin, G. W. Brewster, C. Carr, Geo. Rively, John Lapper, D. Rodz. Vida, Wm. Whitmarsh, L. Lyons, Geo. K. Lindsey, James Vowles, B. Pittman.

The large number of passengers by the Francis Palmer on Monday last, about leaving for California, attracted an unusual concourse of friends, ladies and gentlemen,—to see them off, and to bid them a hearty God-speed. Among those who came to the wharf for this purpose, we noticed His Majesty, and the Ministers of Foreign Relations, Finance and Public Instruction, who all gave the parting salute to Judge Lee with much emotion.—The same may be said, also, of a host of others, in Honolulu, who could not see the departure of near and dear friends, upon a long and uncertain voyage without concern. In fact, the sailing of the F. P. called forth more of this friendly sympathy and interest, than we remember to have seen on the departure of any other vessel from our harbor; although such scenes are common enough in large sea-ports, such as New York and San Francisco.

Ships, Shipping, &c.

The bark FRANCES PALMER, Capt. Paty, sailed on Monday evening last, the 19th inst. with freight and about 40 passengers whose names were published last week. She also took the U. S. and European mails.

—The steamer KALAMA sailed on Monday last for Maui. Her next trip will be to Kauai, for the various ports of which island she will sail on Monday next the 26th inst.

—The non-arrival of the bark FANNY MAJOR, which was to have sailed from San Francisco on the 24th of Feb., leads us to the belief that she was withdrawn from the voyage to Honolulu for some other destination. In such case, the Schr. Vaqueo will be the next vessel due; she sailed hence, Feb. 13th, and is now 29 days absent. She may be looked for daily, with the U. S. mail of Feb. 5th.

—The whaler ship GARLAND of New Bedford arrived at this wharf yesterday, looking badly. We hear she will be obliged to discharge and beave down for repairs. She has 2,000 bls. oil on board, which is offered for sale.

Timely Rescue.

Capt. White of the ship Wm. Thompson, fortunately rescued and brought to Lahaina, 15 natives, who were blown off in the sloop Sarah, of Molokai, in a late gale. They had great difficulty in keeping afloat until rescued, and the sloop soon sunk and was lost, after being taken in tow by the ship

Admiral Bruce at the Brooklyn Navy Yard.

On Tuesday afternoon Henry Wm. Bruce, Admiral of the White, Royal Navy, and Capt. Stewart, of the Royal Marines, paid a visit to the Brooklyn Navy Yard. They called upon Commodore Borman, at his office, and were invited to examine the works in the yard and the shipping at the wharves. Accompanied by Dr. Hosack, of New York, and others, the Commodore introduced the distinguished visitors on board the United States receiving ship North Carolina, under the command of the venerable Captain Peck.—Here the British naval officers were received by a salute of thirteen guns.

After an examination of the old seventy-four gun ship, the visitors recrossed the Wallabout bay in the government boat, and went on board of the frigate Sabine, which is still on the stocks. They next visited the Naval Dry Dock, in which the revenue cutter Washington is repairing, and concluded their friendly visit by accepting the hospitality of Commodore Borman at his dwelling in the yard.—N. Y. Post.

Admiral Bruce is appointed Commander-in-chief of the British squadron in the Pacific, and was at Callao when the Dido sailed, awaiting the arrival of his flag-ship around the Horn. The combined English and French squadron is expected at the islands in April or May; and we understand from rumor that another attack is to be made upon Potopotski, as soon as the place can be safely approached after the breaking up of the ice. We also hear that the squadron will be increased by the addition of a line-of-battle-ship, a steam frigate and a smaller vessel or two on the part of the English, with a similar addition to the French division, the particulars of which we have not heard stated. Honolulu is a convenient port at which to rendezvous before going north, and we have been informed that it has been appointed such by the Commander-in-chief.

Completion of the Panama Railroad.

The waters of the Atlantic and Pacific have at length been connected by a Railroad, and the iron-horse now makes the echoes among the principal forests and rocky defiles of the Isthmus. After years of labor, and in despite of innumerable obstacles, the Railroad from Panama to Aspinwall has been completed, and the transit across, which once consumed many weary days and nights, involving hardships and dangers without number, is now made in a few hours. This is a great point gained by the Panama line of steamers, as it will enable them to reduce their time between New York and San Francisco to twenty-one days, remove all objections urged against the route, on the score of the unhealthfulness of the climate, as passengers will pass so rapidly through that there will not be time to contract disease. It will effectually put a stop to the impositions of the rascally natives; the plunderings and murders by the banditti that infest the country, and afford a safe and easy conveyance for ladies and children, who may be coming without protectors to join their friends here.—The splendid steamship Golden Age, Capt. Watkins, leaves on Friday, and her passengers will be the first from California to pass from ocean to ocean, over the Railroad. The completion of this road, a triumph of American genius and enterprise, is the most in time exert an important influence upon the course of trade and the movements of population. There is not a doubt now, a line of fine steamers will be established between England and Australia, by way of Panama and Tahiti; and over this American road must pass all the gold-seekers that swarm between the old settled countries and the golden shores washed by the Pacific.—S. F. Herald.

The above announcement was made upon what was supposed to be the design of the proprietors, as published in our last issue, and not from a knowledge of the fact after it had transpired. It however marks an era in the history of the world, and exhibits a most important advance in the progress of wonderful events, by which the 19th century will be emphatically distinguished.—The project of uniting the Atlantic and Pacific by a ship canal has been agitated for the last century, and many schemes set on foot to accomplish it; but none have succeeded or in fact been really entered upon, so far as to commence operations. But now, since the discovery of gold in California, a railroad has been projected, and in two or three years after its actual commencement, we find it completed, and the two oceans brought within a few hours travel of each other; while fine steamships on either side await the tide of travel as it surges to and fro, to bear it to the four quarters of the globe.

The influence of the opening of the Panama Railroad upon commerce in the Pacific, must be important, in the highest degree. From that point, we see not why lines will not be formed across the Pacific in different directions,—to China, Australia, and into the Indian Ocean. Trade and travel will increase with the facilities for their accommodation, and the Pacific will rival the Atlantic in the activity of its commercial enterprises. The changes in this respect effected during the past five years afford encouragement to the hope that progress will mark the future, as it has the past; and the broad field of the Pacific affords ample scope and verge enough to satisfy the most restless ambition, which aspires to honorable pre-eminence in the honest walks of life.

No Later Mail.

We again go to press without a mail later than Jan. 20th from N. York. An arrival is hourly looked for, however, with news a fortnight later, which can scarcely fail to be of great interest. Then shall we know whether the "Extra" of the New Orleans Picayune of Jan. 25th, was a hoax or a veritable matter of fact;—whether the Russian flag still waves or "the royal standard of St. George is twined with that of the tri-color of France on the barbed walls of Sevastopol."

Supreme Court, April term.

The special term, in March, was designed so far as jury trials were concerned, to supersede the April term of the above court. On the first Monday in April, however, the court will meet, as required by statute, to hear motions, and arguments of counsel, but not to try cases by jury.

Book Auction, this evening.

A large collection of miscellaneous books will be sold at the Auction Room of Rice & Co. this evening, at a quarter past seven o'clock. Many of these books, we are informed, are of recent importation, and of a desirable character for the general reader or scholar.

"CAROLINE," whose poetical stanzas we published a few weeks ago, is invited to send us a few more of the same sort. We should have the name, however, to comply with our rules.

THE LANCASTER GUN A FAILURE.—A letter from the Crimea says: "The Lancaster guns are a failure. Their power is enormous when the ball strikes the point at which it is aimed, but the gun rarely sends two balls to the same point, and as yet no means have been found to prevent this objection. In an ordinary gun this defect would not be so important, but the enormous expense of every ball fired from a Lancaster gun renders it impossible to indulge in a system by which only one ball in six reaches the object at which it is discharged."

State of Affairs at Melbourne.

The Melbourne correspondent of the Sydney Empire, under date of December 29th writes as follows:—

"The present commercial condition of this colony is most extraordinary, and there seems so much paradox in it that one is puzzled how, reasonably, to account for the remarkable change which has taken place. That depression, want of money, and all their concomitants, should be experienced in what is comparatively the richest and most productive community in the world is certainly, to say the least of it, surprising. You have some idea of the commercial depression which exists here, and you have looked upon the state of trade and industry as unnatural, but you have not realized the extent of the present commercial crisis which is paralysing the energies of Victoria. Even those in business here have only a vague and uncertain distrustful idea of those around them, and hardly conceive the extent to which rottenness pervades the very heart of our commercial world. Those best acquainted with it know best how wide spread is the evil. Within the last few days I have heard it repeatedly remarked, and that too in very different circles, that one would be utterly astonished to hear the names of those now trodding on the verge of insolvency, names which have long been heard in connection with Australian commerce. The men who twelve months since possessed, or at least had the credit of possessing, hundreds of thousands of pounds' worth of property, do not now possess tens. The wealth of the old chums which seemed fabulous is all moonshine. It all lay in papers and documents now hardly worth the value of the paper itself, or in landed property, which having been transmuted by the great magician into gold, has now, by the dissolving of the charm, been restored to its original value, nay, indeed, to less than its intrinsic value. Property has now no price at all. Houses worth £10,000 would hardly get buyers at £1,000; goods of every description are daily forced into sale at prices which would be ludicrously small, did not our better feeling suggest the loss and misery which must be suffered by some one in consequence. Very few persons here are solvent, except those who have had little connection with business transactions. Every description of property has become depreciated. Houses, land, merchandise, vessels, &c., have all shared in the general depreciation. The other day I attended a sale of land within three miles of Brighton, where excellent agricultural lots were knocked down at £2 2s. per acre.—Twelve months ago, the cheapest land that could be got in the neighborhood was £50 an acre. Rents have tumbled down 50 and even 75 per cent., with a prospect of still further depreciation. Hundreds of persons twelve months ago were getting a good income by leasing houses which they had rented at an advanced rate to others in business. Hundreds in business are now suffering from this very traffic in leases, daily losing by transactions they thought would make their fortune. They are anxiously looking for a change, for some lull in the storm which is sweeping over them. They cannot stand the present pressure long, and unless a change come speedily they must succumb."

The commercial embarrassment of the colony is pretty well shown in the condition of the Press in Melbourne. Of course, if newspapers had not been so well supported by the public as it is well known they have been, the difficulties which have overtaken them might be attributed to the common cause of the failure of journals. But probably no community in the world is so remarkable for intelligence and for newspaper reading as that of Victoria. I say it advisedly, that the Press has been well supported by the public, both in respect of circulation and advertisements. Newspaper establishments suffer at present, not so much in consequence of the diminution of public support, as from pecuniary embarrassments caused by the extraordinary commercial changes, if newspapers had not been so well supported by the public as it is well known they have been, the difficulties which have overtaken them might be attributed to the common cause of the failure of journals. 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